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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/538,752	03/30/2000	Jay S. Walker	99-075	8956

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EXAMINER

RADA, ALEX P

ART UNIT	PAPER NUMBER
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3714

DATE MAILED: 02/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/538,752

Applicant(s)

WALKER ET AL.

Examiner

Alex P. Rada

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) 35-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-34, drawn to a card game, classified in class 273, subclass 292.
  - II. Claims 35-39, drawn to an electronic gaming machine, classified in class 463, subclass 22.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because a conventional card game can be played without the aid of an electronic device.

The subcombination has separate utility such as a method does not require a processor and a storage device.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Art Unit: 3714

5. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

6. During a telephone conversation with Mike Downs Reg. No. 50,252 on February 12, 2003 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-34. Affirmation of this election must be made by applicant in replying to this Office action. Claims 35-39 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Long '699 in view of Lofink '064.

Art Unit: 3714

10. Long discloses determining that the hand of blackjack has resulted in a push as recited in claim 1; receiving from the player a wager amount prior to the determining that the hand of blackjack resulted in the push and determining if the player has won the hand of blackjack and arranging for the player to receive payment of a winning amount based on the wager amount as recited in claim 2; deciding if the push will be resolved as recited in claim 3; determining that the hand of blackjack has resulted in the push, the player indication of whether the push will be resolved as recited in claim 4; generating is performed using a set of playing cards used in playing the game as recited in claims 16 and 17; arranging for the player to receive payment of a winning amount as recited in claim 19; determining that the plurality of hands of blackjack have resulted in a push and determining if the player has won at least one of the plurality of hands of blackjack as recited in claims 25 and 28; determining that a first hand of blackjack has resulted in a first push, determining that a second hand of blackjack has resulted in a second push, and determining if the player has won first and second hands of blackjack as recited in claim 31; and receiving an indication that the hand of blackjack has resulted in a push as recited in claim 33.

Long does not expressly disclose a random base outcome to determine if a player has won the hand of a game as recited in claims 1-4 and 25-34; displaying an indication of the random outcome (dice, wheel, or random number generator) as recited in claims 5-7 and 14-15; the generating is performed after the determining if the hand has resulted in a push as recited in claim 8; the generating is performed in response to the determine that the hand has resulted in a push as recited in claim 9; the generating is performed prior to determining that the hand has resulted in a push as recited in claim 10; the random outcome is statistically independent of the hand played prior to the push as recited in claim 11; generating is performed using at least one

Art Unit: 3714

die as recited in claim 12; having more than one deck of cards as recited in claim 18; the winning amount is based at least in part on the random outcome as recited in claim 20; displaying the winning amount to the player as recited in claim 21; the winning amount is based at least in part on at least one of information associated with the player and at least one card accumulated by the player or a dealer as recited in claim 22; and the random outcome having a first state, a second state indicating a win or a loss, and a plurality of states associated with different winning amounts as recited in claims 23-24.

Lofink teaches a random base outcome to determine if a player has won the hand of blackjack in which a push has occurred (column 11, line 31 – column 12, line 35, at least), displaying an indication of the random outcome (dice, wheel, or random number generator), the generating performed after the determining if the hand has resulted in a push, the generating performed in response to the determine that the hand has resulted in a push, the generating is performed prior to determining that the hand has resulted in a push, the random outcome is statistically independent of the hand played prior to the push (summary), the generating performed using at least one die, having more than one deck of cards, the winning amount is based at least in part on the random outcome, displaying the winning amount to the player, the winning amount is based at least in part on at least one of information associated with the player and at least one card accumulated by the player or a dealer (summary), and the random outcome having a first state, a second state indicating a win or a loss, and a plurality of states associated with different winning amounts (tables 1-9). By having a random outcome in a tie situation, one of ordinary skill in the art would be able to provide game players with a final chance to win.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention was made to modify Long to include a random base outcome to determine if a player, a random base outcome to determine if a player has won the hand of a game, displaying an indication of the random outcome (dice, wheel, or random number generator), generating is performed after the determining if the hand has resulted in a push, generating is performed in response to the determine that the hand has resulted in a push, generating is performed prior to determining that the hand has resulted in a push, a random outcome being statistically independent of the hand played prior to the push has won, generating is performed using at least one die, having more than one deck of cards, the winning amount is based at least in part on the random outcome, the winning amount is based at least in part on the random outcome, displaying the winning amount to the player, the winning amount is based at least in part on at least one of information associated with the player and at least one card accumulated by the player or a dealer in the hand of blackjack, and the random outcome having a first state, a second state indicating a win or a loss, and a plurality of states associated with different winning amounts as taught by Lofink. To do so would provide game players with a definite win or loss to entice a more exciting and entertaining game of chance.

Regarding claims 13 and 16, the deck of cards or a coin used is a matter of design choice, wherein no stated problem is solved, or unexpected result obtained, by using the specific deck of cards or coin claimed versus any type of random number generator taught by the prior art.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Art Unit: 3714

Boylan '875 discloses a method of playing a blackjack-type wagering game where the playing cards have ranks and suits.

Schorr '416 discloses a method for playing a blackjack type game having a dealer hand a player hand.

Long '456 discloses a method of playing a card game of blackjack involving a variation which allows a player to place a side wager in addition to the initial wager or anted wherein the side wager allows the player to win at least a portion of a supplemental payout.

Place '285 discloses a wagering game apparatus and method which permits the random selection of prizes for games such as blackjack, poker and electronic games.

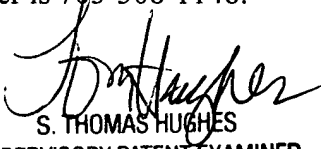
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alex P. Rada whose telephone number is 703-308-7135. The examiner can normally be reached on Monday - Friday, 08:00-16:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes can be reached on 703-308-1806. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

APR  
apr

February 24, 2003

  
S. THOMAS HUGHES  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700